

**Regulations 1620**  
***Interstate and Foreign Commerce***  
**Section 100**

Complete Rule Making File

*OAL Approval with Approved Text Regulation 1620*

*Table of Contents*

1. *Form 400 and Proposed Text Regulation 1620*
2. *Memo to OAL for correct authorization*
3. *Statement of Explanation*
4. *Assembly Bill 1452*
5. *Economic and Fiscal Impact Statements, December 23, 2008*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated December 2, 2008*
- B. *Approved Minutes December 17, 2008*
- C. *BOE "Section 100 Change" Recommendation dated November 26, 2008*
- D. *Reporter's Transcript December 17, 2008*

**State of California  
Office of Administrative Law**

**In re:**

**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1620**

**Repeal sections:**

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**

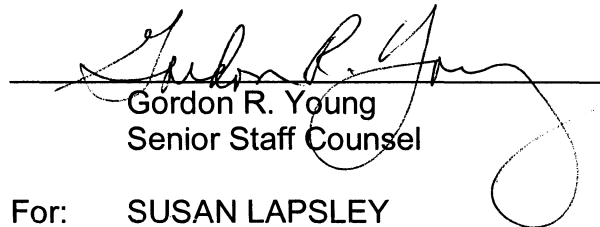
**California Code of Regulations, Title 1,  
Section 100**

**OAL File No. 2008-1223-03 N**

This section 100 change without regulatory effect conforms various time periods and dates listed in T18 CCR section 1620 governing determination of whether a vehicle, vessel, or aircraft was purchased for use out of state to statutory changes made by AB 1452 (Stats. 2008, Chap. 763).

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

**Date: 2/5/2009**

  
Gordon R. Young  
Senior Staff Counsel

**For: SUSAN LAPSLEY  
Director**

**Original: Ramon Hirsig  
Copy: Richard Bennion**

**RECEIVED**

**FEB - 6 2009**

**by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION**

**RECEIVED**

**FEB 9 2009**

**Board Proceedings**

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**SUSAN LAPSLEY**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk *lch*  
DATE: February 6, 2009  
RE: Return of Approved Section 100 File  
OAL File No. 2008-1223-03N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2008-1223-03N regarding Interstate and Foreign Commerce).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30<sup>th</sup> Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

## NOTICE PUBLICATION REGULATION SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 01-08)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2008-1223-03N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED  
IN THE OFFICE OF

2009 FEB -5 PM 3:39

2008 DEC 23 PM 3:05  
OFFICE OF  
ADMINISTRATIVE LAWDebra Bowen  
DEBRA BOWEN  
SECRETARY OF STATEAGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Interstate and Foreign Commerce		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)		
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1620	ENDORSED APPROVED FEB 05 2009 Office of Administrative Law
TITLE(S) 18	REPEAL	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11342, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.	
SIGNATURE OF AGENCY HEAD OR DESIGNEE Debra Bowen	DATE 12/23/08
TYPED NAME AND TITLE OF SIGNATORY Chief, Board Proceedings Division	

Amend Regulation 1620 (Interstate and Foreign Commerce) to read as follows:

**Regulation 1620. Interstate and Foreign Commerce.**

- (a) Sales Tax. . . . (unchanged)
  - (1) In General. . . . (unchanged)
  - (2) Sales Following Movement of Property Into State From Point Outside State.
    - (A) From Other States — When Sales Tax Applies. . . . (unchanged)
    - (B) From Other States — When Sales Tax Does Not Apply. . . . (unchanged)
    - (C) Imports. . . . (unchanged)
  - (3) Sales Preceding Movement of Goods From Within State to Points Outside State.
    - (A) To Other States — When Sales Tax Applies. . . . (unchanged)
    - (B) Shipments Outside the State — When Sales Tax Does Not Apply. . . . (unchanged)
      - 1. . . . (unchanged)
      - 2. . . . (unchanged)
    - (C) Exports.
      - 1. . . . (unchanged)
      - 2. . . . (unchanged)
        - (a) . . . . (unchanged)
        - (b) . . . . (unchanged)
        - (c) . . . . (unchanged)
- Example 1. . . . (unchanged)
- Example 2. . . . (unchanged)
- Example 3. . . . (unchanged)
- Example 4. . . . (unchanged)
- Example 5. . . . (unchanged)
- Example 6. . . . (unchanged)
  - (D) Proof of Exemption. . . . (unchanged)
  - (E) Particular Applications.
    - 1. . . . (unchanged)
    - 2. . . . (unchanged)
    - 3. . . . (unchanged)
    - 4. . . . (unchanged)
- (b) Use Tax.
  - (1) In General. . . . (unchanged)
  - (2) Exceptions.
    - (A) . . . . (unchanged)

## (B) Interstate and Foreign Commerce.

1. In General. . . . (unchanged)
2. Intermodal Cargo Containers. . . . (unchanged)
  - a. . . . (unchanged)
  - b. . . . (unchanged)
  - c. . . . (unchanged)

## (C). . . (unchanged)

## (D) Hand-Carried from a Foreign Country.

1. . . . (unchanged)
2. . . . (unchanged)

## (3) Purchase for Use in this State. . . . (unchanged)

(4) Purchase for Use in this State – Vehicles, Vessels, and Aircraft—90-Day Test (Prior to October 2, 2004, and ~~after June 30, 2007 from July 1, 2007, through September 30, 2008~~). The provisions of subdivision (b)(4) apply prior to October 2, 2004, and ~~after June 30, 2007 from July 1, 2007, through September 30, 2008~~. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel or aircraft is in California. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

## (A) Physically Located Outside California. . . . (unchanged)

## (B) Used in Interstate or Foreign Commerce.

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)

(5) Purchase for Use in this State — Vehicles, Vessels, and Aircraft – 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)
4. . . . (unchanged)

(B) Evidence Rebutting Presumption. This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

Operative September 20, 2006, through June 30, 2007, and after September 30, 2008, in the case of a vehicle, this presumption also may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1. Subdivision (b)(5)(D) applies to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after October 1, 2004.~~

2.1. Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state.

3.2. Subdivision (b)(5)(D)2.1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.

(E) Binding Purchase Contract. Subdivision (b)(5) does not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before October 1, 2004, or from July 1, 2007, through September 30, 2008.

(6) Purchase for Use in This State — Locomotives — 90-Day Test. . . . (unchanged)

(A) Physically Located Outside California. . . . (unchanged)

(B) Used in Interstate or Foreign Commerce. . . . (unchanged)

(7) Examples of Interstate and Foreign Commerce. . . . (unchanged)

Example 1. . . . (unchanged)

Example 2. . . . (unchanged)

Example 3. . . . (unchanged)

Example 4. . . . (unchanged)

Example 5. . . . (unchanged)

Example 6. . . . (unchanged)

Example 7. . . . (unchanged)

Example 8. . . . (unchanged)

Example 9. . . . (unchanged)

Example 10. . . . (unchanged)

Example 11. . . . (unchanged)

Example 12. . . . (unchanged)

Example 13. . . . (unchanged)

(8) Imports. . . . (unchanged)

(9) "Storage" and "Use" — Exclusions. . . . (unchanged)

Example 1. . . . (unchanged)

Example 2. . . . (unchanged)

Example 3. . . . (unchanged)

Example 4. . . . (unchanged)

(c) Rail Freight Cars. . . . (unchanged)

NOTE: Authority cited: Section 7051, Revenue and Taxation Code.

Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396, 6405, Revenue and Taxation Code.



**Regulations 1620**  
*Interstate and Foreign Commerce*  
**Section 100**

Index


1. [Form 400 and Proposed Text Regulation 1620](#)
2. [\*Memo to OAL for correct authorization\*](#)
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4. [Assembly Bill 1452](#)
5. [\*Economic and Fiscal Impact Statements, December 23, 2008\*](#)

## NOTICE PUBLICATION/REGISTRATION SUBMISSION

STD. 400 (REV. 01-08)

(See instructions on reverse)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2008-1223-03N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		ENDORSED FILED IN THE OFFICE OF 2009 FEB -5 PM 3:39  DEBRA BOWEN SECRETARY OF STATE	
NOTICE AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		REGULATIONS AGENCY FILE NUMBER (if any)	

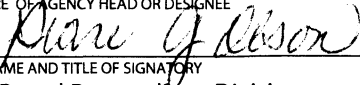
**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Interstate and Foreign Commerce		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)		ENDORSED APPROVED FEB 05 2009 Office of Administrative Law	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND		
	1620		
TITLE(S) 18	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984 E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 12/3/08
TYPED NAME AND TITLE OF SIGNATORY Chief, Board Proceedings Division	

Amend Regulation 1620 (Interstate and Foreign Commerce) to read as follows:

**Regulation 1620. Interstate and Foreign Commerce.**

(a) Sales Tax. . . . (unchanged)

(1) In General. . . . (unchanged)

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States — When Sales Tax Applies. . . . (unchanged)

(B) From Other States — When Sales Tax Does Not Apply. . . . (unchanged)

(C) Imports. . . . (unchanged)

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States — When Sales Tax Applies. . . . (unchanged)

(B) Shipments Outside the State — When Sales Tax Does Not Apply. . . . (unchanged)

1. . . . (unchanged)

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(C) Exports.

1. . . . (unchanged)

2. . . . (unchanged)

(a) . . . . (unchanged)

(b) . . . . (unchanged)

(c) . . . . (unchanged)

Example 1. . . . (unchanged)

Example 2. . . . (unchanged)

Example 3. . . . (unchanged)

Example 4. . . . (unchanged)

Example 5. . . . (unchanged)

Example 6 . . . . (unchanged)

(D) Proof of Exemption. . . . (unchanged)

(E) Particular Applications.

1. . . . (unchanged)

2. . . . (unchanged)

3. . . . (unchanged)

4. . . . (unchanged)

(b) Use Tax.

(1) In General. . . . (unchanged)

(2) Exceptions.

(A) . . . . (unchanged)

## (B) Interstate and Foreign Commerce.

1. In General. . . . (unchanged)
2. Intermodal Cargo Containers. . . . (unchanged)
  - a. . . . (unchanged)
  - b. . . . (unchanged)
  - c. . . . (unchanged)

## (C). . . (unchanged)

## (D) Hand-Carried from a Foreign Country.

1. . . . (unchanged)
2. . . . (unchanged)

## (3) Purchase for Use in this State. . . . (unchanged)

(4) Purchase for Use in this State – Vehicles, Vessels, and Aircraft—90-Day Test (Prior to October 2, 2004, and ~~after June 30, 2007 from July 1, 2007, through September 30, 2008~~). The provisions of subdivision (b)(4) apply prior to October 2, 2004, and ~~after June 30, 2007 from July 1, 2007, through September 30, 2008~~. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel or aircraft is in California. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

## (A) Physically Located Outside California. . . . (unchanged)

## (B) Used in Interstate or Foreign Commerce.

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)

(5) Purchase for Use in this State — Vehicles, Vessels, and Aircraft – 12-Month Test (From October 2, 2004, through June 30, 2007, and after September 30, 2008).

(A) Purchased for Use in California. Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)
4. . . . (unchanged)

(B) Evidence Rebutting Presumption. This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

Operative September 20, 2006, through June 30, 2007, and after September 30, 2008, in the case of a vehicle, this presumption also may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

(C) Used in Interstate or Foreign Commerce.

1. . . . (unchanged)
2. . . . (unchanged)
3. . . . (unchanged)

(D) Repair, Retrofit, or Modification of Vessels or Aircraft.

~~1. Subdivision (b)(5)(D) applies to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after October 1, 2004.~~

~~2.1.~~ Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state.

~~3.2.~~ Subdivision (b)(5)(D)~~2.1.~~ does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.

(E) Binding Purchase Contract. Subdivision (b)(5) does not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before October 1, 2004, or from July 1, 2007, through September 30, 2008.

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Example 11. . . . (unchanged)

Example 12. . . . (unchanged)

Example 13. . . . (unchanged)

(8) Imports. . . . (unchanged)

(9) "Storage" and "Use" — Exclusions. . . . (unchanged)

Example 1. . . . (unchanged)

Example 2. . . . (unchanged)

Example 3. . . . (unchanged)

Example 4. . . . (unchanged)


(c) Rail Freight Cars. . . . (unchanged)

NOTE: Authority cited: Section 7051, Revenue and Taxation Code.

Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396, 6405, Revenue and Taxation Code.

**M e m o r a n d u m**

To : Gordon Young  
Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

From : Richard Bennion   
Regulations Coordinator  
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2008-1223-03N*  
Regulation 1620, Interstate and Foreign Commerce

Date: February 4, 2009

2009 FEB -4 PM 2:27  
OFFICE OF  
ADMINISTRATIVE LAW

This memo is to provide you authorization to:

- 1) Uncheck the "Effective on filing with Secretary of State" box in B.5..
- 2) The Explanation on the date question you had is as follows:

Regulation 1620 is being amended to incorporate the 12-month test provisions of newly-enacted Revenue and Taxation Code section (Section) 6248. That statute was filed and approved by the Governor on September 30, 2008

Subsection (a) of Section 6248 provides in pertinent part that "[o]n and after the effective date of this section, there shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought . . . ." (Emphasis added.) However, subsection (d) of Section 6248 provides in pertinent part that "[t]he amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is . . . purchased on or before the operative date of this subdivision." (Emphasis added.) In other words, Section 6248 is internally inconsistent as to the law applicable on the operative date of the statute. In order to give effect to the specific provisions of newly-enacted Section 6248, subdivision (d), Regulation 1620 is being amended to specify that the 90-day test is in effect through September 30, 2008, and the 12-month test is in effect after September 30, 2008.

When a previous version of Section 6248, which first codified the 12-month test, which was enacted in 2004, the same drafting inconsistency between subdivisions (a) and (d) appeared in that version of Section 6248 as appear in the newly-enacted version. The operative date of that earlier version of Section 6248 was October 1, 2004. (Former Rev. & Tax. Code sec. 6248, subd. (g).) The Office of Administrative Law approved Rule 100 changes to Regulation 1620 (bringing it in conformity with former Section 6248) specifying that the 12-month test apply beginning October 2, 2004.

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Rbennion@boe.ca.gov](mailto:Rbennion@boe.ca.gov).

REB

## AMENDMENT UNDER OAL RULE 100

### Statement of Explanation

#### Title 18. Public Revenue

##### Regulation 1620, *Interstate and Foreign Commerce*

#### **A. Factual Basis**

Regulation 1620 generally addresses *Interstate and Foreign Commerce*. The State Board of Equalization hereby proposes to amend this regulation under OAL Rule 100.

Assembly Bill (AB) 1452 (Ch. 763, Stat. of 2008) amended Revenue and Taxation Code section 6248 to reinstate the provisions for a 12-month test to demonstrate that a vehicle, vessel, or aircraft purchased outside of California was purchased for use out of state. As a result of those statutory changes, the Board has concluded that the corresponding regulatory provisions should also be changed. Revisions to Regulation 1620 are proposed to incorporate the statutory change. These revisions are appropriate for processing under section 100 because they make the regulation consistent with a statutory change.

#### **B. Proposed Amendments**

Subdivision (b)(4): Operative language stating the period during which the 90 day rule applies. Subdivision (b)(5)(A): Operative language stating the period during which the 12 month rule applies. Subdivision (b)(5)(B): Operative language describing the evidence rebutting the presumption and periods of applicability. Subdivision (b)(5)(D): Operative language stating the period of time allowed for Repair, Retrofit, or Modification of Vessels or Aircraft. Subdivision (b)(5)(E): Operative language stating the time period for application of Subdivision (b)(5) to purchases and binding purchase contracts.

#### **Reference- Revenue and Taxation Code section 6248.**

The foregoing changes are appropriate for processing under Rule 100 because they make the regulation consistent with statutory changes and change reference citations.



## **Assembly Bill No. 1452**

### **CHAPTER 763**

An act to amend Sections 6248, 17276, 17942, and 24416 of, to add Sections 17039.2 17276.9, 17276.10, 19137, 23036.2, 23663, 24416.9, and 24416.10 to, and to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2008. Filed with  
Secretary of State September 30, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1452, Committee on Budget. Taxation.

(1) The Sales and Use Tax Law imposes a tax on the storage, use, or other consumption in this state of tangible personal property. Under existing law, there is a presumption that a vehicle shipped or brought into this state within 90 days from the date of its purchase was purchased from a retailer for storage, use, or other consumption in this state, under specified circumstances.

This bill would expand this presumption to a vehicle, vessel, or aircraft brought into California within 12 months from the date of its purchase, if that vehicle, vessel, or aircraft is (A) purchased by a California resident, (B) subject to California's registration or property tax laws during the first 12 months of ownership, or (C) used or stored in this state more than ½ of the time during the first 12 months of ownership. This bill would provide that the presumption may be controverted by documentary evidence, as specified. This bill would also provide that the presumption does not apply to aircraft or vessels brought into this state, on or after the effective date of this act, for the purpose of repair, retrofit, or modification.

(2) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities.

This bill would disallow the deduction for net operating losses and net operating loss carryovers in the 2008 and 2009 taxable years. This bill would extend the carryover period for those net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as they would have if the change had not been enacted. This bill would, for net operating losses incurred in taxable years beginning on or after January 1, 2010, extend the carryover period to 20 years. This bill would allow net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding two taxable years.

(3) Existing law imposes personal income and corporate taxes collected and administered by the Franchise Tax Board.

This bill would require the Franchise Tax Board to administer a tax amnesty program during the period beginning February 1, 2009, and ending on March 27, 2009, inclusive, as provided.

(4) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would provide that for each taxable year beginning on or before January 1, 2008, and before January 1, 2010, the total business credit, as defined, shall not reduce the taxes imposed by those laws below the applicable amount, as defined.

This bill would, under the Corporation Tax Law, provide for taxable years beginning on or after July 1, 2008, that any credit that is an eligible credit, as defined, may be assigned to any eligible assignees, as defined.

(5) The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay, annually to this state, a fee equal to specified amounts based upon total income from all sources derived from or attributable to this state. The fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year and penalties and interest are payable for violations, as specified.

This bill would require that the fee be estimated and paid no later than the 15th day of the 6th month of the taxable year, and would impose an additional penalty for underpayment, as provided.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) On and after the effective date of this section, there shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) The vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is

not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) (1) Notwithstanding subdivision (a), any aircraft or vessel brought into this state for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state.

(2) This subdivision shall not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel is logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel shall not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.

(3) This subdivision shall apply to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after the operative date of this subdivision.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 2. Section 17039.2 is added to the Revenue and Taxation Code, to read:

17039.2. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for each taxable year beginning on or after January 1, 2008, and before January 1, 2010, the total of all business credits otherwise allowable under any credit under any provision of Chapter 2 (commencing with Section 17041), including the carryover of any business credit under a former provision of that chapter, for the taxable year shall not reduce the "net tax" (as defined in Section 17039) below the applicable amount.

(b) For purposes of this section, “business credit” means a credit allowable under any provision of Chapter 2 (commencing with Section 17041) other than the following credits:

(1) The credit allowed by Section 17052.6 (relating to credit for household and dependent care).

(2) The credit allowed by Section 17052.25 (relating to credit for adoption costs).

(3) The credit allowed by Section 17053.5 (relating to renter’s tax credit).

(4) The credit allowed by Section 17054 (relating to credit for personal exemption).

(5) The credit allowed by Section 17054.5 (relating to credit for qualified joint custody head of household and a qualified taxpayer with a dependent parent).

(6) The credit allowed by Section 17054.7 (relating to credit for senior head of household).

(7) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(c) For purposes of this section, the “applicable amount” shall be equal to 50 percent of the “net tax” (as defined in Section 17039) before application of any credits.

(d) The amount of any credit otherwise allowable for the taxable year under Section 17039 that is not allowed due to application of this section shall remain a credit carryover amount under this part.

(e) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit (or any portion thereof) was not allowed.

(f) Notwithstanding anything to the contrary in this part or Part 10.2 (commencing with Section 18401) the credits listed in subdivision (b) shall be required to be applied before any business credits, as limited by subdivision (a), are applied.

(g) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

SEC. 3. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii)

of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or “S” corporation paragraphs (1) and (2) shall be applied to the partnership or “S” corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.



(6) “Acquire” shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 4. Section 17276.9 is added to the Revenue and Taxation Code, to read:

17276.9. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed

for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.

(d) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

SEC. 5. Section 17276.10 is added to the Revenue and Taxation Code, to read:

17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 6. Section 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars (\$900), if the total income from all sources derived from or attributable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) Two thousand five hundred dollars (\$2,500), if the total income from all sources derived from or attributable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Six thousand dollars (\$6,000), if the total income from all sources derived from or attributable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Eleven thousand seven hundred ninety dollars (\$11,790), if the total income from all sources derived from or attributable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(b) (1) (A) For purposes of this section, “total income from all sources derived from or attributable to this state” means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. However, “total income from all sources derived from or attributable to this state” shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(B) For purposes of this section, “total income from all sources derived from or attributable to this state” shall be determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under Section 25137, other than those provisions that exclude receipts from the sales factor.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources derived from or attributable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

(d) (1) The fee imposed by this section shall be estimated and paid on or before the 15th day of the sixth month of the current taxable year.

(2) A penalty of 10 percent of the amount of any underpayment shall be added to the fee. The underpayment amount shall be equal to the difference between the total amount of the fee imposed by this section for the taxable year less the amount paid under paragraph (1) by the date specified in that paragraph. A penalty shall not be imposed with respect to any fee estimated

and paid under this section if the amount paid by the date prescribed in this subdivision is equal to or greater than the total amount of the fee of the limited liability company for the preceding taxable year.

SEC. 7. Section 19137 is added to the Revenue and Taxation Code, to read:

19137. (a) There shall be added to the tax for amounts in each taxable year for which amnesty could have been requested a penalty in an amount determined as follows:

(1) For amounts that are due and payable (as provided in subdivision (f)) on the last day of the tax amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the tax amnesty period specified in Section 19741.

(2) For amounts that become due and payable (as provided in subdivision (f)) after the last date of the tax amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the tax amnesty period specified in Section 19741. In computing the final amount upon which the penalty is computed, deposits made before the end of the tax amnesty period pursuant to Section 19041.5 shall reduce the amount upon which the penalty is computed. Payments or deposits made after the end of the tax amnesty period shall not reduce the amount upon which the penalty is computed.

(3) For purposes of paragraph (2), Sections 19107, 19108, 19110, and 19113 shall apply in determining the amount computed under Section 19101.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) (1) This section shall not apply to any amounts that are treated as paid during the tax amnesty period under paragraph (1) or (2) of subdivision (b) of Section 19743.

(2) This section shall not apply to any amount attributable to an assessment resulting from either of the following:

(A) An examination, within the meaning of Section 19032, where the Franchise Tax Board first contacted the taxpayer in writing in connection with that examination before March 27, 2009, and that assessment was not final before March 27, 2009.

(B) A proposed assessment under Section 19087 where the Franchise Tax Board first contacted the taxpayer in writing in connection with failing to file a return before March 27, 2009, and that assessment was not final before March 27, 2009.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of

any penalty imposed by subdivision (a) or the determination of when an amount is considered due and payable.

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) For purposes of this section, amounts are due and payable on the following dates:

(1) For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case shall it be prior to the day after the payment due date.

(2) For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board.

(3) For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board's finding is mailed or issued.

(4) For all other amounts of liability, the date the assessment is final.

SEC. 8. Chapter 9.2 (commencing with Section 19740) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

#### CHAPTER 9.2. TAX AMNESTY 2009

19740. The Franchise Tax Board shall administer a tax amnesty for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

19741. The tax amnesty shall be conducted during the period beginning February 1, 2009, and ending March 27, 2009, inclusive, pursuant to Section 19743. The tax amnesty shall apply to tax liabilities for taxable years beginning on or after January 1, 2003, and before January 1, 2007.

19742. (a) For any taxpayer who meets each of the requirements of Section 19743, both of the following shall apply:

(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.

(b) This chapter shall not apply to violations of this part for which, as of February 1, 2009, any of the following apply:

(1) A criminal complaint was filed against the taxpayer.

(2) The taxpayer is under criminal investigation.

(c) This chapter shall not apply to any nonreported or underreported tax liability amounts attributable to a potentially abusive tax avoidance transaction. For purposes of this chapter, a “potentially abusive tax avoidance transaction” means any of the following:

(1) A tax shelter as defined in Section 6662(d)(2)(C) of the Internal Revenue Code. For purposes of this chapter, Section 6662(d)(2)(C) of the Internal Revenue Code is modified by substituting the phrase “income or franchise tax” for “Federal income tax.”

(2) A reportable transaction, as defined in Section 6707A(c) (1) of the Internal Revenue Code, with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met.

(3) A listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(4) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury, Internal Revenue Service, or the Franchise Tax Board determines by regulations, notices, coordinated issue papers, or other official public notification as having a potential for tax avoidance or evasion.

(5) A gross misstatement, within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code.

(6) Any transaction to which Section 19774 applies.

(d) No refund or credit shall be allowed with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for tax amnesty for that taxable year pursuant to Section 19743.

(e) Notwithstanding Chapter 6 (commencing with Section 19301), no claim for refund or credit for any amounts paid in connection with the tax amnesty program under this chapter shall be allowed.

19743. (a) This chapter shall apply to any taxpayer that satisfies all of the following requirements:

(1) During the tax amnesty period specified in Section 19741, is eligible to participate in the tax amnesty.

(2) During the tax amnesty period specified in Section 19741, files a completed amnesty application with the Franchise Tax Board electing to participate in the tax amnesty.

(3) By June 1, 2009, does the following:

(A) (i) For any taxable year eligible for the tax amnesty where the taxpayer has not filed any required return, files a completed original tax return for that year.

(ii) For any taxable year eligible for the tax amnesty where the taxpayer filed a return but underreported tax liability on that return, files an amended return for that year.

(B) Pays in full any taxes and interest due for each taxable year described in clauses (i) and (ii) of subparagraph (A), as applicable, for which amnesty is requested, or applies for an installment payment agreement under subdivision (b). For taxpayers who have not paid in full any taxes previously proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for each taxable year for which amnesty

is requested or applies for an installment payment agreement under paragraph (2) of subdivision (b).

(4) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the tax amnesty.

(b) (1) For purposes of complying with the full payment provisions of paragraph (3) of subdivision (a), if the full amount due is paid within the period set forth in paragraph (3) of subdivision (c) of Section 19101 after the date the Franchise Tax Board mails a notice resulting from the filing of an amnesty application or the full amount is paid by June 1, 2009, the full amount due shall be treated as paid during the amnesty period.

(2) (A) For purposes of complying with the full payment provisions of subparagraph (B) of paragraph (3) of subdivision (a), the Franchise Tax Board may enter into an installment payment agreement, but only if final payment under the terms of that installment payment agreement is due and is paid no later than June 30, 2010.

(B) Any installment payment agreement authorized by this subdivision shall include interest on the outstanding amount due at the rate prescribed in Section 19521.

(C) Failure by the taxpayer to comply fully with the terms of an installment payment agreement under this subdivision shall render the waiver of penalties and fees under Section 19742 null and void, unless the Franchise Tax Board determines that the failure was due to reasonable cause and not due to willful neglect.

(D) In the case of any failure described under subparagraph (C), the total amount of tax, interest, fees, and all penalties shall become immediately due and payable.

(c) (1) The application required under paragraph (2) of subdivision (a) shall be in the form and manner specified by the Franchise Tax Board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any taxable year otherwise eligible for amnesty under this part be deemed to constitute an acceptable amnesty application under this part. For purposes of the prior sentence, the application of a refund from one taxable year to offset a tax liability from another taxable year otherwise eligible for amnesty shall not, without the filing of an amnesty application, be deemed to constitute an acceptable amnesty application under this part.

(2) The Legislature specifically intends that the Franchise Tax Board, in administering the amnesty application requirement under this part, make the amnesty application process as streamlined as possible to ensure that participation in the tax amnesty be available to as many taxpayers as possible without otherwise compromising the Franchise Tax Board's ability to enforce and collect the taxes imposed under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(d) Upon the conclusion of the tax amnesty period, the Franchise Tax Board may propose a deficiency upon any return filed pursuant to subparagraph (A) of paragraph (3) of subdivision (a), impose penalties and fees, or initiate criminal action under this part with respect to the difference

between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers previously granted under Section 19742.

(e) All revenues derived pursuant to subdivision (c) shall be subject to Sections 19602 and 19604.

19744. Notwithstanding any other provision of this chapter, if any overpayment of tax shown on an original or amended return filed under this article is refunded or credited within 180 days after the return is filed, no interest shall be allowed under Section 19340 on that overpayment.

19745. (a) The Franchise Tax Board may issue forms, instructions, notices, rules, or guidelines, and take any other necessary actions, needed to implement this chapter, specifically including any forms, instructions, notices, rules, or guidelines that specify the form and manner of any acceptable form of amnesty application described in Section 19743.

(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this chapter.

19746. (a) The Franchise Tax Board shall conduct a public outreach program and adequately publicize the tax amnesty so as to maximize public awareness and to make taxpayers aware of tax amnesty. In addition, the Franchise Tax Board shall make taxpayers aware of the new and increased penalties associated with taxpayer failure to participate in the tax amnesty.

(b) The Franchise Tax Board shall make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, shall send written notice to taxpayers of their eligibility for the tax amnesty. However, failure of the Franchise Tax Board to notify a taxpayer of the existence or correct amount of a tax liability eligible for amnesty shall not preclude the taxpayer from participating in the tax amnesty, nor shall that failure be grounds for abating the penalty imposed under Section 19137.

19747. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the tax amnesty, and who does not participate in the tax amnesty, may not be subject to the penalty imposed under Section 19137 with respect to amounts payable under that agreement.

SEC. 9. Section 23036.2 is added to the Revenue and Taxation Code, to read:

23036.2. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for each taxable year beginning on or after January 1, 2008, and before January 1, 2010, the total of all credits otherwise allowable under any provision of Chapter 3.5 (commencing with Section 23604) including the carryover of any credit under a former provision of that chapter, for the taxable year shall not reduce the “tax” (as defined in Section 23036) below the applicable amount.

(b) For purposes of this section, the “applicable amount” shall be equal to 50 percent of the “tax” (as defined in Section 23036) before application of any credits.



(c) The amount of any credit otherwise allowable for the taxable year under Section 23036 that is not allowed due to the application of this section shall remain a credit carryover amount under this part.

(d) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit (or any portion thereof) was not allowed.

(e) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than \$500,000 for the taxable year.

SEC. 10. Section 23663 is added to the Revenue and Taxation Code, to read:

23663. (a) (1) Notwithstanding any other law to the contrary, for each taxable year beginning on or after July 1, 2008, any credit allowed to a taxpayer under this chapter that is an “eligible credit (within the meaning of paragraph (2) of subdivision (b)) may be assigned by that taxpayer to any “eligible assignee” (within the meaning of paragraph (3) of subdivision (b)).

(2) A credit assigned under paragraph (1) may only be applied by the eligible assignee against the “tax” of the eligible assignee in a taxable year beginning on or after January 1, 2010.

(3) Except as specifically provided in this section, following an assignment of any eligible credit under this section, the eligible assignee shall be treated as if it originally earned the assigned credit.

(b) For purposes of this section, the following definitions shall apply:

(1) “Affiliated corporation” means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) “Eligible credit” shall mean:

(A) Any credit earned by the taxpayer in a taxable year beginning on or after July 1, 2008, or

(B) Any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008, under the provisions of this part.

(3) “Eligible assignee” shall mean any affiliated corporation that is properly treated as a member of the same combined reporting group pursuant to Section 25101 or 25110 as the taxpayer assigning the eligible credit as of:

(A) In the case of credits earned in taxable years beginning before July 1, 2008:

(i) June 30, 2008, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(B) In the case of credits earned in taxable years beginning on or after July 1, 2008.

(i) The last day of the first taxable year in which the credit was allowed to the taxpayer, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(c) (1) The election to assign any credit under subdivision (a) shall be irrevocable once made, and shall be made by the taxpayer allowed that credit on its original return for the taxable year in which the assignment is made.

(2) The taxpayer assigning any credit under this section shall reduce the amount of its unused credit by the face amount of any credit assigned under this section, and the amount of the assigned credit shall not be available for application against the assigning taxpayer's "tax" in any taxable year, nor shall it thereafter be included in the amount of any credit carryover of the assigning taxpayer.

(3) The eligible assignee of any credit under this section may apply all or any portion of the assigned credits against the "tax" (as defined in Section 23036) of the eligible assignee for the taxable year in which the assignment occurs, or any subsequent taxable year, subject to any carryover period limitations that apply to the assigned credit and also subject to the limitation in paragraph (2) of subdivision (a).

(4) In no case may the eligible assignee sell, otherwise transfer, or thereafter assign the assigned credit to any other taxpayer.

(d) (1) No consideration shall be required to be paid by the eligible assignee to the assigning taxpayer for assignment of any credit under this section.

(2) In the event that any consideration is paid by the eligible assignee to the assigning taxpayer for the transfer of an eligible credit under this section, then:

(A) No deduction shall be allowed to the eligible assignee under this part with respect to any amounts so paid, and

(B) No amounts so received by the assigning taxpayer shall be includable in gross income under this part.

(e) (1) The Franchise Tax Board shall specify the form and manner in which the election required under this section shall be made, as well as any necessary information that shall be required to be provided by the taxpayer assigning the credit to the eligible assignee.

(2) Any taxpayer who assigns any credit under this section shall report any information, in the form and manner specified by the Franchise Tax Board, necessary to substantiate any credit assigned under this section and verify the assignment and subsequent application of any assigned credit.

(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraphs (1) and (2).

(4) The Franchise Tax Board may issue any regulations necessary to implement the purposes of this section, including any regulations necessary to specify the treatment of any assignment that does not comply with the requirements of this section (including, for example, where the taxpayer and eligible assignee are not properly treated as members of the same combined reporting group on any of the dates specified in paragraph (3) of subdivision (b)).

(f) (1) The taxpayer and the eligible assignee shall be jointly and severally liable for any tax, addition to tax, or penalty that results from the disallowance, in whole or in part, of any eligible credit assigned under this section.

(2) Nothing in this section shall limit the authority of the Franchise Tax Board to audit either the assigning taxpayer or the eligible assignee with respect to any eligible credit assigned under this section.

(g) On or before June 30, 2013, the Franchise Tax Board shall report to the Joint Legislative Budget Committee, the Legislative Analyst, and the relevant policy committees of both houses on the effects of this section. The report shall include, but need not be limited to, the following:

(1) An estimate of use of credits in the 2010 and 2011 taxable years by eligible taxpayers.

(2) An analysis of effect of this section on expanding business activity in the state related to these credits.

(3) An estimate of the resulting tax revenue loss to the state.

(4) The report shall cover all credits covered in this section, but focus on the credits related to research and development, economic incentive areas, and low income housing.

SEC. 11. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five taxable years" in lieu of "20 years" except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any income year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an “S corporation,” paragraphs (1) and (2) shall be applied to the partnership or “S corporation.”

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair

market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 12. Section 24416.9 is added to the Revenue and Taxation Code, to read:

24416.9. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.



(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.

(d) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars (\$500,000) for the taxable year.

SEC. 13. Section 24416.10 is added to the Revenue and Taxation Code, to read:

24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate the current fiscal crisis, it is necessary that this act go into immediate effect.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1620, Interstate and Foreign Commerce		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *(Include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |   |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements  |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards   |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals   |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above <i>(Explain below. Complete the Fiscal Impact Statement as appropriate.)</i> |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.*(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)*2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses *(Include nonprofits)*: \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional *(list areas)*: \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS** *(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND SOCIAL IMPACT STATEMENT *cont. (STD. 503, Rev. 2-98)***

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No
- Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** *(Include calculations and assumptions in the rulemaking record.)*  
*Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.*

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 329, Rev. 2-98)***

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes    ☐ No    *(If No, skip the rest of this section)*

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:                    \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

Alternative 1:                \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

Alternative 2:                \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

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**FISCAL IMPACT STATEMENT**

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A. FISCAL EFFECT ON LOCAL GOVERNMENT *(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)*

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_)

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**


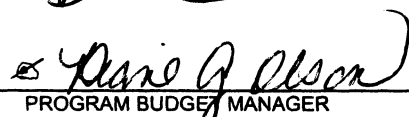
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE
		Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>		DATE
APPROVAL/CONCURRENCE		12/23/08
DEPARTMENT OF FINANCE <sup>2</sup>	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE	Exempt under SAM section 6660	

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**Memorandum**

**To** : Mr. Ramon J. Hirsig  
Executive Director, MIC:73

**Date:** December 2, 2008

**From** : Kristine Cazadd, Chief Counsel  
Legal Department, MIC:83

**Subject** : Regulation 1620, *Interstate and Foreign Commerce*  
Chief Counsel's Rulemaking Calendar  
Board Meeting—December 16-18, 2008

Assembly Bill (AB) 1452 (Ch. 763, Stat. of 2008) amended Revenue and Taxation Code section 6248 to reinstate the provisions for a 12-month test to demonstrate that a vehicle, vessel, or aircraft purchased outside of California was purchased for use out of state. The provisions for a 12-month test previously had expired on June 30, 2007. AB 1452 reinstated the provisions for a 12-month test effective October 1, 2008. To incorporate the new statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1620 on the Chief Counsel's Rulemaking Calendar on December 16 to 18, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because it makes the regulation consistent with a statutory change.

Attached is the strikeout and underlined version of the regulation.

If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



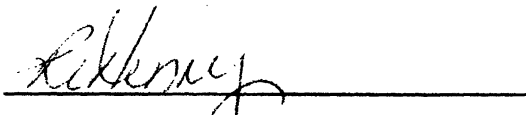
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director  
Sales and Use Tax Department

BOARD APPROVED

At the 12/17/08 Board Meeting



Diane Olson, Chief  
Board Proceedings Division

Attachments

cc (all with attachments):

Ms. Randie L. Henry (MIC 43)

Ms. Diane Olson (MIC 80)

Mr. Randy Ferris (MIC 82)

Mr. Robert Tucker (MIC 82)

Mr. Timothy Treichelt (MIC 82)

Mr. Jeffrey L. McGuire (MIC 92)

Mr. Geoffrey E. Lyle (MIC 50)

Ms. Leila Hellmuth (MIC 50)

Ms. Lisa Andrews (MIC 50)

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## Proposed Amendments to Regulation 1620

### Regulation 1620. INTERSTATE AND FOREIGN COMMERCE.

Reference: Sections 6006, 6008, 6009.1, 6051, 6201, 6247, 6248, 6352, 6366.2, 6368.5, 6387, 6396, 6405, Revenue and Taxation Code.

#### (a) SALES TAX.

(1) **IN GENERAL.** When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the taxing of the sale, or the gross receipts derived therefrom, is prohibited by the United States Constitution or there exists a statutory exemption. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.

#### (2) SALES FOLLOWING MOVEMENT OF PROPERTY INTO STATE FROM POINT OUTSIDE STATE.

**(A) From Other States - When Sales Tax Applies.** Sales tax applies when the order for the property is sent by the purchaser to, or delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this state, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business and the sale occurs in this state. The term "other place of business" as used herein includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer's functions in this state. It is immaterial that the contract of sale requires or contemplates that the goods will be shipped to the purchaser from a point outside the state. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the tax.

**(B) From Other States - When Sales Tax Does Not Apply.** Sales tax does not apply when the order is sent by the purchaser directly to the retailer at a point outside this state, or to an agent of the retailer in this state, and the property is shipped to the purchaser, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state, or to the retailer's agent in this state for delivery to the purchaser in this state, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such branch, office, outlet, or place of business.

**(C) Imports.** Sales tax applies to sales of property imported into this state from another country when the sale occurs after the process of importation has ceased, regardless of whether the property is in its original package, if the transaction is otherwise subject to sales tax under subdivision (a)(2)(A) of this regulation.

#### (3) SALES PRECEDING MOVEMENT OF GOODS FROM WITHIN STATE TO POINTS OUTSIDE STATE.

**(A) To Other States - When Sales Tax Applies.** Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3)(D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

**(B) Shipments Outside The State - When Sales Tax Does Not Apply.** Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.



1. Facilities operated by the retailer or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a "carrier" or "forwarding agent" within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (This subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

**(C) Exports.**

1. When Sales Tax Applies. Except for certain new motor vehicles delivered to a foreign country pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610), sales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.

Sales of property such as fuel oil and other items consumed during a voyage to a foreign country are not exempt even though they are transported out of, and are not returned to this country. It is immaterial that the ship to which the property is delivered is of foreign registry.

2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to a foreign country. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

There has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of:

- a. Facilities operated by the retailer,
- b. A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export, or
- c. A ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Delivery by the retailer of property into a facility furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use. The following are examples of deliveries by the retailer into facilities furnished by the purchaser which demonstrate an irrevocable commitment of the property into the exportation process:

Example 1. Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.

Example 2. Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.

Example 3. Sale of equipment, designed specifically for use in the foreign destination, delivered to a foreign purchaser's aircraft. The foreign purchaser has filed a flight plan showing that the aircraft will be transporting the property on a continuous journey to its foreign destination.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

The following are examples of sales which do not demonstrate sufficient indicia of an irrevocable commitment to the exportation process and do not qualify as exports:

Example 4. Sale of jewelry delivered to a foreign purchaser at the retailer's place of business or to the purchaser or his representative at the airport prior to boarding the plane. The tax applies even though the purchaser may hold tickets for the foreign destination.

Example 5. Sale of a television set delivered into the trunk of a passenger vehicle or into the storage area of a pickup truck.

Example 6. Sale of equipment delivered to a foreign purchaser's aircraft even though a flight plan had been filed showing that the aircraft was to be flown to a foreign destination. If the equipment sold had been altered or specifically designed for use in the foreign destination, then the combined factors of the character of the property and the means of transportation would provide certainty of export and the sale would qualify as an export as described in (3) above.

Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country. Nevertheless, sales of property are exempt if transported under the circumstances described in 2.b. above to a warehouse or other collecting point of a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export. Property is regarded as transported under the circumstances described in 2.b. above, when the property is sold to a purchaser for shipment abroad and is shipped or delivered to a point in this state to a person who is not the purchaser, whether or not that person is a legal entity related to the purchaser, who ships or delivers the property to a foreign destination as provided in paragraph (a)(3)(C)2.b. of this regulation.

**(D) Proof of Exemption.** Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken under (B) above. Bills of lading, import documents of a foreign country or other documentary evidence of export must be obtained and retained by retailers to support deductions taken under (C) above.

**(E) Particular Applications.**

1. **Property Mailed to Persons in the Armed Forces.** Tax does not apply to sales of property which is mailed by the retailer, pursuant to the contract of sale, to persons in the armed forces at points outside the United States, notwithstanding the property is addressed in care of the postmaster at a point in this state and forwarded by him to the addressee.

When mail is addressed to Army Post Offices (A.P.O.'s) or to Fleet Post Offices (F.P.O.'s) in care of the postmaster, it will be presumed that it is forwarded outside California. The retailer must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

2. **Property for Defense Purposes Delivered to Offices of the United States.** Tax does not apply to sales of property shipped to a point outside this state pursuant to the contract of sale when the property is marked for export and delivered by retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

3. **Airplanes Delivered to Agencies of the United States.** Tax does not apply to sales of airplanes and parts and equipment for airplanes transported to a point outside this state pursuant to the contract of sale when such property is delivered to the United States Air Force or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

4. **Repairers.** When repairers of property in California, in fulfillment of their repair contracts with their customers, ship the repaired property to points outside this state by one of the methods set forth under (a)(3)(B) and (C) above, tax does not apply to the sale by the repairer of the repair parts and materials affixed to and becoming a component part of the repaired property so shipped.

**(b) USE TAX.**

(1) **IN GENERAL.** Use tax applies to the use of any property purchased for storage, use or other consumption and stored, used, or consumed in this state, the sale of which is exempt from sales tax under this regulation.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

**(2) EXCEPTIONS.**

**(A)** Use tax does not apply to the use of property held or stored in this state for sale in the regular course of business nor to the use of property held for the purposes designated in subparagraph (b)(7), below.

**(B) Interstate and Foreign Commerce.**

1. **IN GENERAL.** Use tax does not apply to the use of property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

2. **INTERMODAL CARGO CONTAINERS.** Intermodal cargo containers are containers that are used to transport freight during a continuous movement of that freight from the origin shipper to the destination receiver by the use of two or more of the following modes of transportation: railroad, vehicle, or vessel. The use of an intermodal cargo container in California is exempt from tax if the use meets the requirements of subdivision (b)(2)(B)1 of this regulation.

An intermodal cargo container is regarded as first used in interstate or foreign commerce prior to its entry into California if the container is loaded with freight outside California and then first enters California during a continuous movement of that freight from the origin shipper to the destination receiver. For purposes of the requirements set forth in subdivision (b)(2)(B)1 of this regulation, an intermodal cargo container is also regarded as first used in interstate or foreign commerce prior to its entry into California if all of the following conditions are satisfied:

a. The contract for the sale or lease of the intermodal cargo container requires that the container be used in interstate or foreign commerce and such sales contract or lease contract is entered into prior to the entry of the intermodal cargo container into California;

b. The purchaser or lessee transports the intermodal cargo container into California with the specific intent that such intermodal cargo container will then be loaded with freight for transport in a continuous movement to a destination outside California, whether or not the purchaser knows which particular freight will be loaded into the intermodal cargo container at the time the intermodal cargo container first enters California; and

c. The intermodal cargo container is, in fact, first loaded with freight for transport in a continuous movement to a destination outside California, and the intermodal cargo container is thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

**(C)** Use tax does not apply to the use of certain new motor vehicles purchased for subsequent delivery to a foreign country and so delivered pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610).

**(D) Hand-Carried from a Foreign Country.**

1. Prior to January 1, 2008, use tax does not apply to the storage, use, or other consumption in this state of the first four hundred dollars (\$400) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand-carried into this state from the foreign country within any 30-day period. This subdivision shall not apply to property sent or shipped to this state.

2. On and after January 1, 2008, use tax does not apply to the storage, use, or other consumption in this state of the first eight hundred dollars (\$800) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand-carried into this state from the foreign country within any 30-day period. This subdivision shall not apply to property sent or shipped to this state.

**(3) PURCHASE FOR USE IN THIS STATE.** Property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in this state unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor.

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. Except as provided in subdivision (b)(5) of this regulation, when property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into

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California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

(4) PURCHASE FOR USE IN THIS STATE – VEHICLES, VESSELS, AND AIRCRAFT—90-DAY TEST (PRIOR TO OCTOBER 2, 2004, ~~AND AFTER JUNE 30, 2007~~ FROM JULY 1, 2007, THROUGH SEPTEMBER 30, 2008). The provisions of subdivision (b)(4) apply prior to October 2, 2004, ~~and after June 30, 2007~~ from July 1, 2007, through September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel or aircraft is in California. When the vehicle, vessel or aircraft is first functionally used outside of California, the vehicle, vessel or aircraft will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

(A) **Physically Located Outside California.** Use tax will not apply if the vehicle, vessel or aircraft is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

(B) **Used in Interstate or Foreign Commerce.**

1. If the property is a vehicle, use tax will not apply if one-half or more of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate or foreign commerce.

2. If the property is a vessel, use tax will not apply if one-half or more of the nautical miles traveled by the vessel during the six-month period immediately following its entry into the state are commercial miles traveled in interstate or foreign commerce.

3. If the property is an aircraft, use tax will not apply if one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(4), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

(5) PURCHASE FOR USE IN THIS STATE - VEHICLES, VESSELS, AND AIRCRAFT– 12-MONTH TEST (FROM OCTOBER 2, 2004, THROUGH JUNE 30, 2007, AND AFTER SEPTEMBER 30, 2008).

(A) **Purchased for Use in California.** Except as provided in subdivision (b)(5)(D) below, the provisions of subdivision (b)(5) apply from October 2, 2004, through June 30, 2007, and after September 30, 2008. A vehicle, vessel, or aircraft purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the vehicle, vessel, or aircraft is in California. When a vehicle, vessel, or aircraft is purchased outside of California, is first functionally used outside of California, and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle, vessel, or aircraft was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the Vehicle Code, as that section now reads or is hereinafter amended.

2. In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

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3. In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

4. The vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

**(B) Evidence Rebutting Presumption.** This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

Operative September 20, 2006, through June 30, 2007, and after September 30, 2008, in the case of a vehicle, this presumption also may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

**(C) Used in Interstate or Foreign Commerce.**

1. If the property is a vehicle, use tax will not apply if one-half or more of the miles traveled by the vehicle during the six-month period immediately following its entry into this state are commercial miles traveled in interstate or foreign commerce.

2. If the property is a vessel, use tax will not apply if one-half or more of the nautical miles traveled by the vessel during the six-month period immediately following its entry into the state are commercial miles traveled in interstate or foreign commerce.

3. If the property is an aircraft, use tax will not apply if one-half or more of the flight time traveled by the aircraft during the six-month period immediately following its entry into the state is commercial flight time traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(5)(C), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

**(D) Repair, Retrofit, or Modification of Vessels or Aircraft.**

~~1. Subdivision (b)(5)(D) applies to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after October 1, 2004.~~

~~2.1. Notwithstanding subdivision (b)(5)(A) above, aircraft or vessels, the purchase and use of which are subject to the 12-month test described in subdivision (b)(5), that are brought into this state for the purpose of repair, retrofit, or modification, shall not be deemed to be acquired for storage, use, or other consumption in this state.~~

~~3.2. Subdivision (b)(5)(D)2.1. does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.~~

**(E) Binding Purchase Contract.** Subdivision (b)(5) does not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before October 1, 2004, or from July 1, 2007, through September 30, 2008.

(6) PURCHASE FOR USE IN THIS STATE – LOCOMOTIVES — 90-DAY TEST. A locomotive purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the

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first functional use of the locomotive is in California. When the locomotive is first functionally used outside of California, the locomotive will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, exclusive of any time of shipment to California or time of storage for shipment to California, unless:

**(A) Physically Located Outside California.** Use tax will not apply if the locomotive is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state.

**(B) Used in Interstate or Foreign Commerce.** Use tax will not apply to transactions involving locomotives if one-half or more of the miles traveled by the locomotive during the six-month period immediately following its entry into California are commercial miles traveled in interstate or foreign commerce.

Such use will be accepted as proof of an intent that the property was not purchased for use in California. For purposes of subdivision (b)(6), the term "commercial" applies to business uses and excludes personal use. However, the term "commercial" is not limited to for-profit businesses.

**(7) EXAMPLES OF INTERSTATE AND FOREIGN COMMERCE.** Examples of what constitutes interstate or foreign commerce include, but are not limited to the following:

Example 1. A sightseeing tour bus group (charter) or regularly scheduled bus service (per capita) originates in California and travels to another state or country for a single day or several days, then returns to California where the charter or schedule terminates.

Example 2. A charter bus, vessel or aircraft deadheads under contract to another state, picks up the group and operates the charter without entering the state of California, drops the group in the other state, and deadheads back into the State of California. (The charter was quoted round trip.)

Example 3. A commercial vehicle deadheads to another state or country or transports property to another state or country and delivers that property within the other state or country or to another state or country. The vehicle then returns to California, either loaded or empty.

Example 4. A charter bus group tours under contract to another state or country for a day or several days, drops the passengers in the other state or country, and then deadheads back under contract to its terminal or next assignment.

Example 5. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft and transported to another state or country for a day or several days. The commercial vehicle, vessel or aircraft then returns to California, either loaded or empty.

Example 6. A sightseeing tour bus group (charter) arriving in California via plane, train, or ship from another state or country is picked up by bus and tours California for a number of days, goes to another state or country for a number of days, and then terminates service either in another state, country, or California.

Example 7. Property arriving in California via plane, train, or vessel from another state or country is picked up by a commercial vehicle, vessel or aircraft, which may be operating wholly within California, and transported for further distribution to one or more California locations or to locations in another state or country. The vehicle, vessel or aircraft then returns empty to pick up another load arriving in California via plane, train, or vessel from another state or country.

Example 8. A commercial vehicle, vessel, aircraft, or regularly scheduled bus service operating wholly within California is picking up or feeding passengers or property arriving from, or destined to, a state or country other than California to another form of transportation be it plane, train, ship, or bus. (Example: an airport bus service or a bridge carrier for Amtrak.)

Example 9. Property is transported by a commercial vehicle, vessel, aircraft, or locomotive from another state or country to California or from California to another state or country. While engaged in this transportation, the commercial vehicle, vessel, aircraft, or locomotive also transports property from one point in California to another.

Example 10. A commercial vehicle, vessel, aircraft, or locomotive is dispatched from one location in California to another location in California to pick up property and transport it to another state or country.

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Example 11. A commercial vehicle, vessel or aircraft, sightseeing tour bus group (charter), or regularly scheduled bus service operating in interstate or foreign commerce experiences a mechanical failure and is replaced by another vehicle, vessel or aircraft. The replacement vehicle, vessel or aircraft is also deemed to be operating in interstate or foreign commerce as a continuation of the original trip.

Example 12. A vehicle, vessel, aircraft, or locomotive transports persons or property for commercial purposes (a) from California to another state or country; (b) from another state or country to California; (c) entirely within California, but the vehicle, vessel, aircraft, or locomotive picks up persons or property arriving in California via train, bus, truck, vessel, or aircraft from another state or country and then transports the persons or property in a continuous route or journey to one or more California locations or to locations in another state or country.

Example 13. A vessel transports persons or property for commercial purposes (a) from a California port to a port in another state or country; or (b) from a port in another state or country to a port in California.

(8) **IMPORTS.** Use tax applies with respect to purchases of property imported into this state from another country when the use occurs after the process of importation has ceased and when sales tax is not applicable, regardless of whether the property is in its original package.

(9) **"STORAGE" AND "USE" - EXCLUSIONS.** "Storage" and "use" do not include the keeping, retaining or exercising any right or power over property for the purposes of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured, into, attached to, or incorporated into, other property to be transported outside the state and thereafter used solely outside the state.

The following examples are illustrative of the meaning of the exclusion:

Example 1. An engine installed in an aircraft which is flown directly out of the state for use thereafter solely outside the state qualifies for the exclusion. The use of the engine in the transporting process does not constitute a use for purposes of the exclusion. However, if any other use is made of the aircraft during removal from this state, such as carrying passengers or property, the exclusion does not apply.

Example 2. An engine installed in a truck which is transported by rail or air directly out of the state for use thereafter solely outside the state qualifies for the exclusion.

Example 3. An engine transported outside the state and installed on an aircraft which returns to the state does not qualify for the exclusion. It does not matter whether the use of the aircraft in California is exclusively interstate or intrastate commerce or both.

Example 4. An engine transported outside the state and installed on an aircraft which does not return to the state, qualifies for the exclusion.

**(c) RAIL FREIGHT CARS.** Sales tax does not apply to the sale of, and the use tax does not apply to the storage, use or other consumption in this state of rail freight cars for use in interstate or foreign commerce.

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Wednesday, September 17, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SALES AND USE TAX APPEALS HEARING**

Juan Carlos Morales, 389924 (KH)

8-1-04 to 2-12-06, \$9,824.29 Tax, \$8,420.30 Penalties

For Petitioner: Juan C. Morales, Taxpayer

For Sales and Use Tax Department: Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was a responsible person who is personally liable for the outstanding liabilities of Family Sports Pizza and Grill, LLC for the period December 2, 2005, to February 12, 2006, in addition to the conceded period of August 1, 2004, to March 31, 2005.

Whether petitioner has established reasonable cause sufficient to relieve the late payment, failure to file return, and finality penalties originally assessed against Family Sports Pizza and Grill, LLC for the periods August 1, 2004, to March 31, 2005, and December 2, 2005, to February 12, 2006.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **PUBLIC HEARING**

#### **Proposed Amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices*, and 1602, *Food Products***

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices* and 1602, *Food Product*, to clarify that when a dietary supplement or adjunct product does not qualify as a food product, it may qualify as medicine if furnished by a physician as part of a medically supervised weight loss program to treat obesity. (Exhibit 9.2.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted amendments to the regulations as recommended by staff.

Exhibits to these minutes are incorporated by reference.



BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1620

REASON FOR CHANGE (check those applicable)

renumbering, reordering, or relocating regulatory provision

deleting regulatory provision for which all statutory or constitutional authority has been repealed

deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court

revising structure, syntax, cross-reference, grammar, or punctuation

changing an "authority" or "reference" citation

☒ making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

**Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.**

Prepared by Lina Andrews Date 11/18/08

Approvals

Division Chief [Signature] Date 11/18/08

Deputy Director [Signature] Date 11-19-08

Assistant Chief Counsel [Signature] Date 11/20/08

Chief Counsel [Signature] Date 11/23/08

Chief, Board Proceedings [Signature] Date 11/26/08

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

DECEMBER 17, 2008

ITEM J3

CHIEF COUNSEL MATTERS

RULEMAKING

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board  
of Equalization:

Judy Chu  
Chairwoman

Betty Yee  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Tim Treichelt

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Sacramento, California  
December 17, 2008

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DR. CHU: J3, Proposed Amendments to Sales and  
Use Tax Regulation 1620, Interstate and Foreign  
Commerce.

MR. TREICHEL: Madam Chair, Honorable Members,  
Tim Treichelt, Legal Department.

Item J3 proposes and OAL Rule 100 amendment to  
Regulation 1620, interstate and foreign commerce. The  
proposed amendments will reinstate the provisions for a  
12-month test to demonstrate that a vehicle, vessel or  
aircraft purchased outside of California was purchased  
for use out of state.

The provisions for a 12-month test expired on  
June 30, 2007. AB 1452 reinstated the provisions for a  
12-month test effective October 1, 2008.

This change is appropriate for processing under  
Rule 100 because it makes the regulation consistent with  
the statutory change.

Therefore, we request your approval. Thank  
you.

MS. STEEL: Dr. Chu, comment.

DR. CHU: Yeah, Ms. Steel.

MS. STEEL: Well, I support this but at the  
same time that we keep going back and forth and it's  
very confusing, so I think we should have outreach to

1 educating people that, you know, we are doing it again.

2 MS. YEE: I -- I think that's a great idea.

3 We -- it actually constituted a good number of  
4 constituent calls, yeah, in my district.

5 MR. TREICHEL: Thank you.

6 MR. LEONARD: Dr. Chu.

7 DR. CHU: Yes, Mr. Leonard.

8 MR. LEONARD: You're -- Mr. Treichelt's  
9 probably not the one, is Sales and Use planning a  
10 special mailing to yacht brokers, airplane, car guys?

11 DR. CHU: Well, they're all nodding yes, so --

12 MR. LEONARD: Some kind of chart that says what  
13 the rules were when?

14 Yeah, thank you.

15 MS. YEE: I'll move approval.

16 MS. STEEL: I second.

17 DR. CHU: Okay, motion by Ms. Yee, second by  
18 Ms. Steel to approve item J3, proposed amendments to  
19 Sales and Use Tax Regulation 1620, interstate and  
20 foreign commerce.

21 And without objection, that is adopted.

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## REPORTER'S CERTIFICATE.

State of California     )  
                                  ) ss  
County of Sacramento    )

I, BEVERLY D. TOMS, Hearing Reporter for the  
California State Board of Equalization certify that on  
December 17, 2008 I recorded verbatim, in shorthand, to  
the best of my ability, the proceedings in the  
above-entitled hearing; that I transcribed the shorthand  
writing into typewriting; and that the preceding 4 pages  
constitute a complete and accurate transcription of the  
shorthand writing.

Dated: January 14, 2009.

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BEVERLY D. TOMS  
Hearing Reporter